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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,969	08/01/2007	Robert Charles Sutton	1281-173PUS (F-TP-30037US)	2719
70757 7590 11/02/2010 Christopher & Weisberg, P.A. 200 East Las Olas Boulevard Suite 2040 Fort Lauderdale, FL 33301			EXAMINER LEE, SI M	
			ART UNIT 4123	PAPER NUMBER
			MAIL DATE 11/02/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/598,969	<b>Applicant(s)</b> SUTTON ET AL.	
	<b>Examiner</b> SI LEE	<b>Art Unit</b> 4123	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/15/06</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Statues of the Claims***

Claims 1, 3, 6, 8, 11-13 were amended on 9/15/06. Currently, claims 1-13 are pending for consideration.

### ***Claim Objections***

1. Claim 1 is objected to because of the following informalities: transitional phrase needed to better confirm to U.S. practices (i.e. comprising). Appropriate correction is required.
2. Claim 6 is objected to because of the following informalities: "in" stated twice in sentence. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 2 recites the limitation "the form of the oronasal mask". There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless – (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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6. Claims 1-5, 8-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Keifer et al. (7,261,104) herein after referred to as Keifer.

Keifer (figure 1A and 2C) discloses a respirator (10) that covers the full face of the wearer; a visor (50); a main volume indicated with an arrow in the figure where air is drawn from the exterior via a primary filter (400); a secondary volume indicated with an arrow in the figure that encloses the oronasal mask of the wearer; a secondary filter (800). Filtering elements (400 and 800) are operable to attach these cartridges as known in the art in column 6 lines 17-19.

Fig. 1A

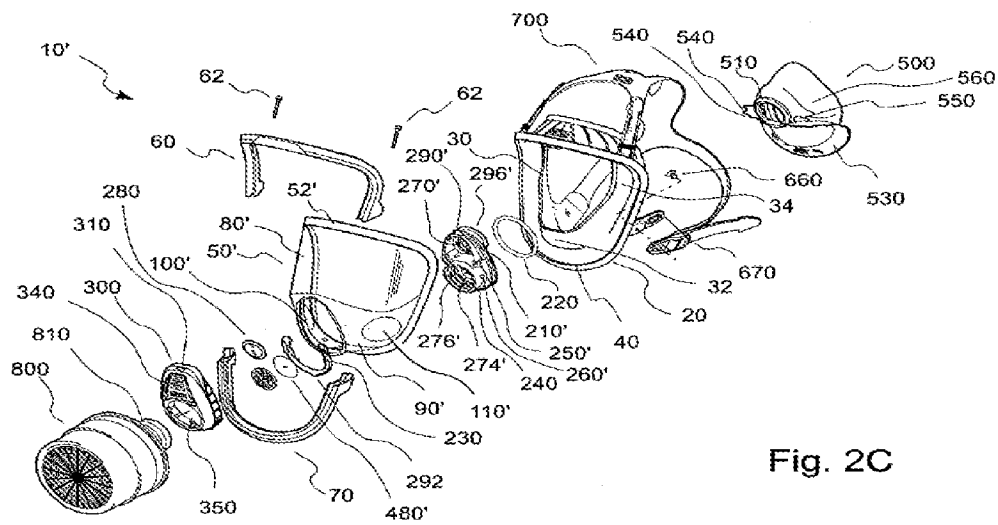
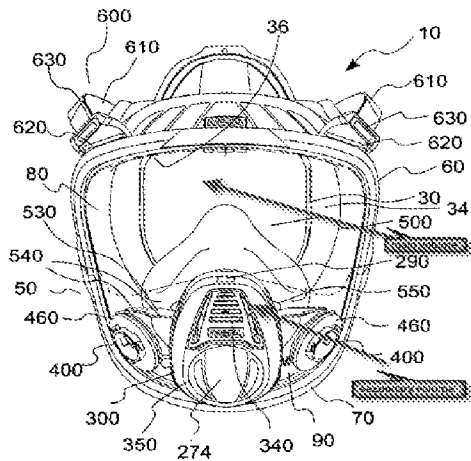


Fig. 2C

Regarding claim 2, Keifer discloses an oronasal mask that forms a sealing contact around a nose and mouth of a user. (Figure 1A with arrow drawn shows the secondary volume).

Regarding claim 3, Keifer discloses a primary inlet ports (110) and filtering elements connectors in figures 3A-3C. Air is drawn from the main volume from the exterior via an inlet where it holds the primary filter in column 6 lines 57-60.

Regarding claim 4, Keifer discloses "a one way check valve" to allow air in the main volume from the exterior (column 6 lines 57-64).

Regarding claim 5, examiner interprets the air flow path as beginning at the primary filter (400) located on the right of the respirator flowing to the one way valve (480) located on the left of the primary filter, where air is traveling downstream (column 6 lines 57-64).

Regarding claim 8, Keifer (figure 9A), examiner interprets inlet (110) for air to be passed from the main volume to the secondary volume that is located on the opposite side of the main volume where Keifer discloses the inspiration passage (550) in column 2 lines 11-23.

Regarding claim 10, Keifer discloses a conduit (530) and figure 4D illustrates the baffle openings (540) one of the same side as the primary inlet port (110) and the other on the opposite side.

Regarding claim 12, Keifer discloses an exhale valve (280) whereby air may be expelled to the exterior (column 7 and 8 lines 55-60 and lines 65-69).

### ***Claim Rejections - 35 USC § 103***

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 6, 7, 13 are rejected under 35 U.S.C 103(a) as being unpatentable over Keifer et al. (7,261,104) in view of Tayebi (6,978,782).

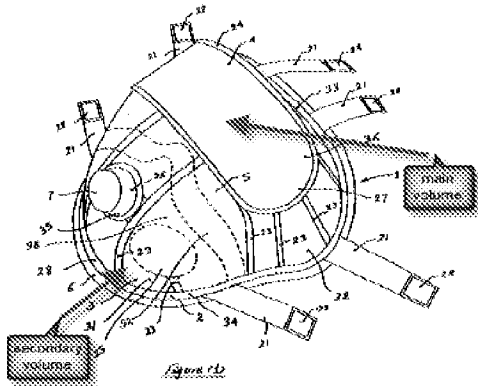
Regarding claim 6, 7, and 13, Keifer discloses claimed invention, except for a one way inhalation valve assembly and a separate self contained volume. Tayebi teaches at least one inhalation valve which only allows air flow from one main volume to the secondary volume (column 6 lines 27-36).

Next, Tayebi teaches at least one inhalation valve that allows flow of air only in the direction from the upper breathing chamber (38-a) to the lower breathing chamber (38-b) which examiner interprets as downstream of secondary filter.

Lastly, Tayebi figure 1 show a separate secondary volume contained within the main volume where air filtration shell (3) defining the secondary volume covers the nose and mouth portion of wearer.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the mask assembly of Keifer, with the inhalation valve assembly and a separate secondary volume covering the nose and mouth of the wearer using the teachings of Tayebi, since such a modification would provide a secondary and additional filtration to the user to ensure the removal of harmful agents.





### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SI LEE whose telephone number is (571)270-5450. The examiner can normally be reached on Monday-Friday 7:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on (571)272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S.L./

Examiner, Art Unit 3771

10.4.10

**/DAVID ISABELLA/**

**Supervisory Patent Examiner, Art Unit 3774**